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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,480	12/28/2000	Mitchell R. Swartz		7970

7590 01/16/2002

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EXAMINER

BEHREND, HARVEY E

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 01/16/2002

Paper No. 7

Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment filed on 6/4/01 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on September 8, 2000 (see *65 Fed. Reg. 54603*, Sept. 8, 2000, and *1238 O.G. 77*, Sept. 19, 2000). In order for the amendment to be compliant, applicant must supply the following omissions or corrections in response to this notice.

THE FOLLOWING ITEMS ARE REQUIRED FOR COMPLIANCE WITH RULE 1.121 (APPLICANT NEED NOT RE-SUBMIT THE ENTIRE AMENDMENT);

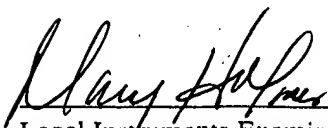
- ☐ 1. A clean version of the replacement paragraph(s)/section(s) is required. See 37 CFR 1.121(b)(1)(ii).
- ☐ 2. A marked up version of the replacement paragraph(s) is required. See 37 CFR 1.121(b)(1)(iii).
- ☐ 3. A clean version of the amended claim(s) is required. See 37 CFR 1.121(c)(1)(i).
- ☐ 4. A marked up version of the amended claim(s) is required. See 37 CFR 1.121(c)(1)(ii).

Explanation: _____

(LIE: Please provide specific details for correction to assist the applicant. For example, "the clean version of claim 6 is missing.")

For further explanation of the amendment format required by 37 FR 1.121, see MOEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/dcom/olia/pbg/sampleaf.pdf>. A condensed version of a sample amendment format is attached.

- ☐ **PRELIMINARY AMENDMENT:** Unless applicant supplies the omission or correction to the preliminary amendment in compliance with revised 37 CFR 1.121 noted above within ONE MONTH of the mail date of this letter, examination on the merits may commence without entry of the originally proposed preliminary amendment. This notice is not an action under 35 U.S.C. 132, and this ONE MONTH time limit is not extendable.
- ☐ **AMENDMENT AFTER NON-FINAL ACTION:** Since the above mentioned reply appears to be *bona fide*, applicants is given a TIME PERIOD of ONE MONTH or THIRTY DAYS from the mailing of this notice, whichever is longer, within which to supply the omission or correction noted above in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).


Legal Instruments Examiner(LIE)

Art Unit: 3641

The reply filed on 6/4/01 is not fully responsive to the prior Office action because of the following omission(s) or matter(s): The 6/4/01 response failed to elect a specie from the grouping set forth in section 2 on page 2 of the 5/7/01 Office action, and, to provide a listing of all claims readable thereon.

On page 9 of the 6/4/01 response, applicant appears to have indicated he has not elected a species as required by section 5 on page 3 of the 5/7/01 Office action, because he does not know what the examiner means with the reference to a "monitoring configuration". The examiner is using the term in the same manner that applicant has used it in the specification at the bottom of page 15 and the top of page 16. Applicant must comply with the election of species requirement in said section 5 of the 5/7/01 Office action.

For applicants response to be complete, applicant must provide a listing of all claims readable on each of the elected species.

The examiner does not agree that the examiner is precluded from making the present restriction requirement due to actions by a different examiner in the parent case. Each applicant (and its accompanying claims) are treated on their own merits. See particularly MPEP 811.04 which states:

Even though inventions are grouped together in a requirement in a parent application, restriction or election among the inventions may be required in the divisional applications, if proper.

Art Unit: 3641

Applicant has not shown the election of species requirements set forth on pages 2-3 of the 5/7/01 Office action, to be improper or in error.

It would represent a serious burden on the examiner to search and examine claims to each of the species referred to each of the groupings in sections 2-5 of the 5/7/01 Office action as evidenced for example just by the widely varying systems/structures illustrated in the different figures in the drawings.

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication should be directed to Mr. Behrend at telephone number (703) 305-1831.

Behrend/cw
October 30, 2001



HARVEY E BEHREND
PRIMARY EXAMINER